

**MINUTES
of the
SECOND MEETING
of the
BEHAVIORAL HEALTH SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**September 3, 2013
Barbara Hubbard Room, New Mexico State University
1810 E. University, Bldg. 284
Las Cruces**

The second meeting of the Behavioral Health Subcommittee of the Legislative Health and Human Services Committee (LHHS) was called to order by Senator Benny Shendo, Jr., chair, at 10:15 a.m. on Tuesday, September 3, 2013, in the Barbara Hubbard Room on the campus of New Mexico State University (NMSU) in Las Cruces.

Present

Sen. Benny Shendo, Jr., Chair
Rep. Phillip M. Archuleta, Vice Chair
Sen. Sue Wilson Beffort
Sen. Craig W. Brandt
Rep. Sandra D. Jeff
Sen. Howie C. Morales
Sen. Bill B. O'Neill
Sen. Gerald Ortiz y Pino
Rep. Paul A. Pacheco
Sen. Mary Kay Papen
Sen. Sander Rue
Rep. Edward C. Sandoval

Guests Legislators

Rep. Mary Helen Garcia
Rep. James Roger Madalena

Staff

Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
Michael Hely, Staff Attorney, LCS
Rebecca Griego, Records Officer, LCS
Nancy Ellis, Contract Staff, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, September 3

Introductions

Senator Shendo asked members and staff to introduce themselves.

Welcome

Dr. Tilahun Adera, dean and professor, College of Health and Social Services, NMSU, welcomed subcommittee members and guests and described NMSU's plans for becoming the primary regional hub for social services. Dr. Adera described how the various schools within the College of Health and Social Services — the School of Nursing, the School of Social Work and the Department of Public Health Sciences — are helping to meet the needs of the region and entire state. Special programs include a research center to train graduate students in research methodology, a center for child advocacy, a border epidemiology center, an institute for research into health disparities and a southern area health education center to improve access to primary care. The college ranks high in training Native American and Hispanic students, she said, and maintains a vision of bringing a national work force to NMSU by offering high-quality programs at undergraduate and graduate levels.

Dr. Pamela Schultz, associate dean and director of the School of Nursing, touted the excellence of the school's mental health program. As the only university in the region that trains psychiatric nurse practitioners, the school just graduated its first class in doctorate of nursing practice, an advanced program converted from the master's program in response to changes in national accreditation requirements. Graduate programs focus on family nursing practice, adult health and geriatric nursing, as well as community health. Another area of focus is family violence, she said, and the school would like to plan a workshop for teachers — a two-day event each semester — on sexual abuse of children.

Update on the Status of Behavioral Health Services

Brent Earnest, deputy secretary of human services, described the driving purpose of the Human Services Department (HSD) as assuring access to care and the highest quality of services. Ensuring Medicaid integrity is worthy of investigating, he said, as every dollar misspent does not go to services. There is increased federal emphasis on efforts to catch fraud, and the federal Patient Protection and Affordable Care Act (PPACA) provides new fraud-detection tools.

Deputy Secretary Earnest said that in November 2012, the HSD received a referral from OptumHealth of suspicious billing activity involving 15 provider agencies. The HSD reached out to the Attorney General's Office (AGO), and the AGO agreed that further independent investigation was needed. The HSD then contracted with Public Consulting Group Inc., (PCG) to audit these 15 agencies. In January and February, after receiving the referral from OptumHealth, the HSD started to reach out to other agencies for possible transition, including

three providers from Arizona, Deputy Secretary Earnest said. It was of utmost importance that access and continuity of care be maintained, he said. Early audit results indicated that additional entities might be required for full transition, and the HSD identified two additional Arizona entities. On June 21, 2013, the results of PCG's audit confirmed credible allegations of fraud (CAFs) against the 15 agencies and \$36 million in possible overpayments, Deputy Secretary Earnest said. On June 24, these results were presented to the AGO, the Federal Bureau of Investigation and the United States attorney general for possible criminal prosecution. The HSD suspended Medicaid payments to these providers in accordance with federal guidelines for Medicaid funding, he said. HSD funds totaling \$6.3 million have been expended so far during this transition: \$4 million for payroll of existing agency staff to maintain continuity of care, \$1.4 million for professional costs, \$709,000 for operations and the remainder for office and other expenses.

Larry Heyeck, deputy general counsel, HSD, said that PCG is in 46 other states doing similar audits and that this was not a canned audit; HSD staff worked closely with the auditors on a daily basis. PCG was asked by the HSD to "follow the money" and to examine business relationships that could indicate conflicts of interest. "We found that executives and others were doing extremely well", Mr. Heyeck said. He then distributed a chart (see handouts) with lines connecting behavioral health provider agencies in overlapping business relationships with other entities. "If something appears to be wrong, this is what's wrong," he said, holding up the chart. As an example, the "Rio Grande Seven" providers depicted in the chart all had relationships with Rio Grande Behavioral Health Services, a company that is incorporated in Arizona. Many of the seven providers also had relationships with two other companies. All of the information on this chart came from publicly available sources, Mr. Heyeck said, such as federal nonprofit 990 tax forms, county clerk records, corporate structures, etc., and he urged all legislators and citizens "to look it up". In addition to the PCG audit identifying \$36 million in overpayments, he said, the relationships depicted in the chart need to be examined.

Diana McWilliams, chief executive officer of the Interagency Behavioral Health Purchasing Collaborative (IBHPC) and director of the HSD's Behavioral Health Services Division, spoke about the transition of service providers. She said that three agencies have had some of their funding restored by the HSD, and the other 12 are now transitioning. The new agencies have been reaching out to staff, and there has been an 88 percent retention rate of clinicians and paraprofessionals. There is a process to protect the audited agencies as well as the new agencies, and there is a process to protect consumer information. The new agencies have requested releases of information in order to transfer medical records from the former providers. If a release is not signed, the consumer can have a new assessment or go elsewhere for treatment.

Ms. McWilliams discussed phone calls and other inquiries coming into the IBHPC about the transition. The vast majority of these calls have been questions about the audit or general questions about what is going on, she said. There was a misunderstanding with Albuquerque Public Schools about behavioral health services in the schools, but the HSD is working with the district to get it resolved. Ms. McWilliams said she is collecting "positive transition stories",

including some from employees of the new service providers who have been given raises and who now have health insurance. She also said it is very important that the IBHPC is hearing directly from consumers. She advised subcommittee members to refer any concerns they receive from the public directly to her.

Questions/Concerns

A subcommittee member asked if the contracts for these new providers end on December 31. Their contracts now are with OptumHealth, and if they stay on, Deputy Secretary Earnest said, they will then contract with managed care organizations (MCOs) under Centennial Care. They are not currently being reimbursed through Medicaid, he said. Their billing systems are not up and running yet. There is a lot of training taking place right now to ensure fidelity to billing, he said.

Another member asked if the \$17.8 million in transitional funds is state money. "Yes", Deputy Secretary Earnest replied, "although we will try to get some matching federal dollars for services after the fact". OptumHealth is paid on a monthly basis, and all claims during the transition are being held by OptumHealth in an escrow account for retrospective accounting, he said. OptumHealth is not benefiting financially now. Most of the transition funds are for payroll of former and new agency employees.

A member commented that the amount of valid claims will be greatly reduced because of reduced services during the transition due to lack of access, but OptumHealth still gets the same capitated rate. Several subcommittee members said they felt that the state agencies should be able to oversee the non-Medicaid behavioral health services (costing approximately \$50 million) without paying OptumHealth to be in the middle. "It is a totally unnecessary contract", said one member. Another asked Mr. Heyeck, "Are you [the HSD] discussing a contract with Optum?". Mr. Heyeck confirmed that discussions with OptumHealth are ongoing.

One subcommittee member expressed great concern about reports that hospitals in Las Cruces and Silver City are being flooded with clients who have been turned away by La Frontera, one of the new Arizona providers. Ms. McWilliams said she had not heard this but would look into it. Another member asked if employees were being terminated to go to work for the Arizona agencies and was told that this did happen because of taxes. Another member asked if the Arizona companies rehired everyone. Deputy Secretary Earnest said they were told to rehire all clinical staff and others, and most were rehired, but they were told not to rehire management or administrators, he said.

A member asked whether employees at Arizona companies have been threatened or told that they would be fired if they spoke to anyone or the press about the transition. Mr. Heyeck said that the HSD learned that employees were told by their former employers not to speak to transitional providers.

A subcommittee member expressed great concern about hardships for employees who lost

vacation time and personal treatment options (PTOs) in the transition. This is true, Mr. Heyeck said, but the Arizona providers did retain employees' seniority and will provide the same amount of vacation. It is up to former providers to pay for PTOs. "The state torpedoed these former providers and let them go broke", commented a subcommittee member. Mr. Heyeck responded that these nonprofits should have had more cash reserves.

A member asked whether anyone from the HSD had spoken with the Workforce Solutions Department. Mr. Heyeck said that he does not know if any employees from the affected agencies have applied for unemployment.

Based on what he has heard from people at Southwest Counseling, the transition to La Frontera has been chaotic, a member said. "There's nothing smooth about it. We all know it's not going smoothly." He continued, "Are the CEOs of these Arizona companies all male, all Anglo? It's important to me that New Mexico hire from here, not from out of state." Mr. Heyeck responded that these companies are now New Mexico providers, not Arizona providers, and that there is cultural diversity in the leadership — one chief executive officer is African American. In response to a question about whether the Arizona providers are properly licensed to practice in New Mexico, Mr. Heyeck assured subcommittee members that in spite of some technical hurdles, they are now licensed.

Another member asked why the HSD did not shut down the 15 service providers in December if it had CAFs at that time. Deputy Secretary Earnest said that the HSD had reports from whistleblowers who said that they had been fired for reporting overbilling, billing for services that were never provided and billing without documentation, but OptumHealth's referral alone was enough for a CAF. New PPACA regulations require that a CAF, once referred, requires a suspension of payments. Knowing how disruptive this would be, Deputy Secretary Earnest said, after consultation with the AGO, the HSD took the extra step of hiring an independent auditor. "Our hands were tied", he said of these suspensions. "It was something we had to do."

An extended discussion among members about rights to "justice" for the accused New Mexico providers, given the secrecy of the audit and the frenzy of media attention, followed. "When do you finally get to see that evidence?", one member asked. "It will all be played out in the media before it ever goes to court. It needs to be decided, and charges need to be filed by the AG", she said. Another member said he is incredulous that the accused providers cannot see the charges against them. "Surely you are aware, Mr. Heyeck, of the severity of cutting off funding — putting these people out of business. And what if it turns out they are exonerated?"

A member asked Ms. McWilliams, "How can you paint such a rosy picture of this transition? Clearly, with 27 calls [to a CMS-sponsored forum last week] about problems, there have been many disruptions in service." Ms. McWilliams responded that it is absolutely not true that a client could not get service. The HSD has been fronting money to cover provider salaries, she said. "We have a very fragile system here in mental health, and we are very committed to

addressing any disruptions. It is absolutely unacceptable for a former provider to tell clients they won't get services. If that means assisting each of these persons on an individual basis, I will take care of it personally.", she said.

Several members referred to the "Behavioral Health Funding Schematic" handout of the "Rio Grande Seven", finding its meaning to be unclear. Another member said she found the chart and the HSD's entire presentation to be "very accusatory" toward the former providers and feels that there are two sides to every story. The chart seems like selective secrecy, observed another member. "How does this not impair the investigation? People are being accused of things in the public sphere and cannot see the charges; it really bothers me." A member added that Secretary of Human Services Sidonie Squier said the provider agencies were all "criminals" at the last meeting of the LHHS in Albuquerque. "Where is Secretary Squier?", another member inquired. Deputy Secretary Earnest informed the subcommittee that her absence was due to recent eye surgery. The absence of La Frontera was noted by a member. "My concern is that we have appropriated tax dollars, and it is disrespectful for them not to appear when we asked." Ms. McWilliams assured the member that La Frontera's absence was an agenda issue. She did not know that La Frontera had been requested to attend the meeting and asked that, in the future, she be included in any invitations to the new vendors.

A member of the audience, Roque Garcia, asked and was granted permission by the chair to speak to the subcommittee about allegations depicted in the chart distributed by Mr. Heyeck. Mr. Garcia is acting chief executive officer of Southwest Counseling Center, a former provider who was singled out by name in Mr. Heyeck's description of the Rio Grande Seven's relationships with other entities. Mr. Garcia defended his network of affiliations and said that it had saved the state more than \$40,000 per year. He asked if members were aware that La Frontera listed 18 different related corporations on its Form 990, one of these even being a for-profit entity. Members asked Mr. Heyeck why he did not provide that information, as well. Deputy Secretary Earnest said that the HSD would follow up on this request.

Subcommittee members had questions about the \$17.8 million in transitional funding and where it came from. Deputy Secretary Earnest said that these funds, included in the budget from the last legislative session, were transferred from a contractual services category. There is a surplus within the Medicaid program budget, he said, so nothing was taken away. Other members expressed concern that Medicaid dollars might be at risk and that the HSD might encounter a situation with the federal Centers for Medicare and Medicaid Services (CMS), whereby millions of dollars have to be repaid, as happened last year with special education funds in the Public Education Department. Another member lamented the high administrative fees being paid out to OptumHealth. Overbilling is one thing, she said, "but these enormous administrative contracts need to be looked at, as well".

The subcommittee chair said he was very sorry that Secretary Squier had walked out during a previous meeting of the subcommittee and now was unable to attend this meeting. "We need to hear from the secretary", he said. "She needs to be here to defend her department."

Information on the costs of the transfer to transitional providers and copies of any lease arrangements were requested by another member, who also was concerned about potential taxpayer losses from lawsuits filed by displaced providers. Another member noted that elections are just around the corner, and this is likely to provide the opportunity for much political grandstanding.

North Carolina Audit

Knicole Emanuel, a partner at Williams Mullen law firm in Raleigh, North Carolina, and a specialist in Medicaid litigation for health care providers and Medicaid recipients, said that the situation in New Mexico is comparable in many ways to the one in North Carolina, where PCG conducted a similar audit. Using a PowerPoint presentation (see handout), Ms. Emanuel explained that preventing fraud is the federal government's overarching goal, and the PPACA puts states in charge of identifying overpayments from Medicaid through recovery auditor contractors (RAC), of which PCG is one. States and RAC vendors must coordinate recovery audit efforts, and RAC vendors are reimbursed through a contingency model. The audit is a three-year look back.

Ms. Emanuel showed an example of a tentative notice of overpayment from PCG to a North Carolina provider and showed how amounts owed are extrapolated, and she described numerous PCG "bloopers", including extrapolation errors, code confusion, no-medical-necessity errors and a lack of training among auditors. Her advice to her provider clients: "Appeal, appeal and appeal". She expressed shock that the New Mexico providers audited by PCG were given no due process for appeal by the state. Under federal law, states must provide appeal rights under state law or administrative procedures to Medicaid providers that seek review of an adverse Medicaid RAC determination, she said. Nationwide, 72 percent of appealed denials are successful. Ms. Emanuel said she often uses administrative procedures instead of state law, and she often utilizes restraining orders to secure a stay of the suspension of payments pending litigation. According to Ms. Emanuel, Section 27-11-3 NMSA 1978 might be relevant to an appeals process for providers.

A subcommittee member asked the chair for permission to bring a guest up from the audience to join the discussion — Thomas Aldridge, Charlotte-based manager with PCG, who is responsible for both the North Carolina and New Mexico audits. Mr. Aldridge denied that his company's auditors are inexperienced and said they have the depth and breadth of experience and have successfully conducted audits in 46 states. PCG maintains six statisticians on staff, he said, and utilizes sophisticated software to do extrapolations. Mr. Aldridge strongly defended the integrity of the North Carolina and New Mexico audits. For the New Mexico audit, PCG auditors obtained and examined, during unannounced visits, a sample of 150 claims from each provider.

During questioning, Mr. Aldridge revealed that, in January, at Ms. McWilliams' request, he accompanied her and other HSD staff members on a trip to Arizona to interview potential new providers. The trip, which took place before the audit began, was paid for by the HSD, he said.

Several subcommittee members indicated they were very concerned that this was a conflict of interest. Mr. Aldridge explained that Ms. McWilliams asked him to go because of his years of experience to help determine whether these providers had proper compliance in place. Mr. Aldridge said the audit has been completed, and that he was not being paid to be at the meeting today.

New Mexico Quality Audits of MCOs for Medicaid Requirements

William Boyd Kleefisch, executive director of HealthInsight New Mexico, said his company has been the Medicaid external quality review organization (EQRO) with the HSD since 2005, providing oversight for all Medicaid managed care physical, long-term care and behavioral health contracts. The OptumHealth audit was from July 1, 2011 to June 30, 2012. (See the handout of the PowerPoint presentation.) Its focus was on OptumHealth's compliance with all applicable laws. Because its contract expires on December 31, this will be the last year OptumHealth will be audited.

Margaret A. White, director, EQRO, and Greg Lujan, behavioral project manager, EQRO, joined Mr. Kleefisch for the presentation. They explained that an external quality review means the analysis and evaluation of quality, timeliness and access to the health care services that an MCO furnishes to Medicaid recipients.

Mr. Lujan, who designed the audit to HSD and CMS specifications, described his own background and his credentials as a therapist in behavioral health and as an auditor and care coordinator in managed care. Mr. Lujan coordinated all OptumHealth audit activities, providing oversight and monitoring of auditors, and he also drafted the final report. The audits are progressive, he said. The first year, OptumHealth's score was 87 percent, which indicated "moderate compliance", with three areas needing corrective action. OptumHealth's second year was 97 percent, indicating full compliance, with the corrective action plan lifted. Year three was 99 percent, and OptumHealth was found to be in full compliance with all aspects of the quality audit for fiscal year 2013.

One member commented that she failed to see how OptumHealth can have these high scores, and many provider organizations got scores of 90 percent to 95 percent in their audits from OptumHealth, yet now they are being labeled as criminals and frauds. OptumHealth is making huge amounts of money off the state, she said. "What kind of responsibility does this organization have?", she asked.

Public Comment

Becky Beckett, member of the National Alliance for the Mentally Ill-New Mexico, thanked the subcommittee for its work. The most vulnerable people are being used as pawns, she said.

A psychiatric nurse at Southwest Counseling Center explained that she contracted with La Frontera out of loyalty to her patients who are without services. Because La Frontera's medical director admitted that he does not have a license, she is suspended from work.

Douglas Frazier is a consumer who said he does not understand New Mexico any more and would like to move away. He was helped by a TeamBuilders program and said that TeamBuilders personnel are not criminals.

Earl Nissen, member of a number of local nonprofits and currently serving on the board of directors of the New Mexico Alliance for School-Based Health Care, asked legislators to come up with solutions to strengthen and extend behavioral health services in school-based health centers. It would be unconscionable for the new behavioral health managers to cut any services that would negatively affect high school students, he said. Mr. Nissen offered subcommittee members a handout with more details about school-based health centers.

Patsy Romero, chief operating officer of Easter Seals El Mirador, described many problems and huge gaps in service in the northern communities of Taos, Espanola and Raton. Ongoing issues with handling and transfer of medical records have resulted in at least 12 client families filing complaints, she said. The HSD has not paid furloughed employees, Ms. Romero said. She described her employees as intimidated and misinformed by HSD staff about the facts of the investigation. She also said that during the audit, PCG's software program corrupted 97 percent of the files that were being uploaded.

Jim Jackson, executive director of Disability Rights New Mexico, echoed Ms. Romero's comments and assured members that the complaints are real. There are delays in access to medications, ongoing therapy and services. Without behavioral health services in schools, children are being kept home. He described eight years of disappointment, first with ValueOptions, then OptumHealth. He is quite skeptical that things will be better under Centennial Care. Mr. Jackson urged subcommittee members to look into the use of the \$17.8 million that has been transferred. Some of this money is for items other than services, he said, and there could be anti-donation violations by using these dollars for payroll.

Nancy Jo Archer, chief executive officer of Hogares, Inc., said that after 35 years of leading the agency, no one is more concerned about fraud than she is. Ms. Archer characterized the transition of services as a "hostile takeover" and an abandonment of services. "It is un-American", she said. Staff is demoralized and depressed, and services have been negatively affected. The HSD and the Arizona providers have created a traumatized community that is out of balance. "In this business, trust is paramount", she said. "Now that's gone."

Delfina Roach, who works with the New Mexico Brain Injury Alliance, said she is scared about the quality of care for children with behavioral problems. This usually gets attention only when there is a crisis. Quality care is not being looked at as a whole, she said. Out-of-home regulations require placement with in-state providers even if there are not appropriate places for them to go. Ms. Roach thanked Senator Morales for his earlier statement regarding the potential for loss of matching federal dollars because of mismanagement of Medicaid funds.

Adjournment

The meeting was adjourned at 5:40 p.m.